

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ZEN YORK LOWTHER,

Defendant.

CR 24–16–M–DLC

ORDER

Before the Court is United States Magistrate Judge Kathleen L. DeSoto’s Findings & Recommendation Concerning Plea. (Doc. 22.) Because neither party objected, they are not entitled to *de novo* review. 28 U.S.C. § 636(b)(1); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). Therefore, the Court reviews the Findings and Recommendation for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000).

Lowther is charged with one count of prohibited person in possession of a firearm and ammunition, in violation of 18 U.S.C. § 922(g)(1) (Count 1), one count of possession of a firearm with an obliterated serial number, in violation of 18 U.S.C. § 922(k) (Count 2), and one count of possession of an unregistered

firearm, in violation of 26 U.S.C. § 5861(d) (Count 3), as set forth in the Indictment. (Doc. 1.) Judge DeSoto recommends that this Court accept Lowther's guilty plea as to Count 2 after Lowther appeared before her pursuant to Federal Rule of Criminal Procedure 11. The Court finds no clear error in Judge DeSoto's Findings and Recommendation and adopts them in full, including the recommendation to defer acceptance of the Plea Agreement until sentencing when the Court will have reviewed the Plea Agreement and Presentence Investigation Report. In light of the United States' motion for preliminary order of forfeiture (Doc. 24), the Court will address the issue of forfeiture by separate order.

Accordingly, IT IS ORDERED that Judge DeSoto's Findings and Recommendation (Doc. 22) is ADOPTED in full.

IT IS FURTHER ORDERED that Lowther's motion to change plea (Doc. 16) is GRANTED.

IT IS FURTHER ORDERED that Lowther is adjudged guilty as charged in Count 2 of the Indictment.

DATED this 19th day of August, 2024.



Dana L. Christensen, District Judge
United States District Court